

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W 86899.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Rentals

Where, following a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit the executed lease agreement and advance rental within 30 days of receipt of notice, the application is properly rejected.

APPEARANCES: Raymond C. Long, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Raymond C. Long has appealed from the March 19, 1984, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease application, W 86899, drawn with first priority for parcel WY-430 in the July 1983 drawing. The basis for the rejection was appellant's failure to submit the first year's rental in the correct amount within the time allowed.

BLM sent appellant the lease agreement and request for rental in accordance with 43 CFR 3112.6-1(a). 1/ Appellant received the request on November 7, 1983. Appellant submitted a rental check timely; however, the check was completed incorrectly in that the handwritten amount read "One Thousand forty dollars," \$200 less than the required amount. 2/ On November 21, 1983, BLM issued a notice of return of remittance stating, "The figure amount of the check does not agree with the written amount. Please

1/ Regulation 43 CFR 3112.6-1(a) states that the executed lease offer forms and rental payment must be filed with the proper BLM office within 30 days of receipt of the notice. Regulation 43 CFR 3112.5-1(c) provides that the application of the first priority applicant "shall be rejected if the offer is not filed in accordance with § 3112.6-1 of this title."

2/ Regulation 43 CFR 3103.2-1(a) states, in part: "An offer deficient in the first year's rental by not more than 10 percent or \$200, whichever is less, shall be accepted by the authorized officer provided all other requirements are met." Here the required rental was \$1,240. The lesser of 10 percent, or \$200, would be \$124.

submit a new remittance." ^{3/} The lease agreement and a proper remittance were received by BLM on December 12, 1983, 5 days after the due date of December 7, 1983.

On appeal appellant states that the error in the check was not a deliberate attempt to delay payment. When the check was returned, the mail was not immediately opened, appellant states, because he was in the hospital undergoing back surgery and his wife did not realize the importance of the letter. Appellant also mentions that bad weather in December held up mail delivery. Appellant further asserts that when BLM received his check on December 12, and deposited it, BLM was accepting his payment and a lease should issue to him.

[1] The regulations requiring execution of the lease agreement and payment of the advance rental within 30 days of notice are mandatory. The regulations provide no leeway for consideration of excuses for failure to pay timely. See Robert D. Nininger, 16 IBLA 200 (1974), *aff'd*, Nininger v. Morton, No. 74-1246 (D.D.C. Mar. 25, 1975); see also Susan Dawson, 35 IBLA 12 (1978), *aff'd*, Dawson v. Andrus, *supra*. BLM may not accept the forms and payment after the 30-day period because the rights of the second- and third-qualified applicants have intervened. Paul C. Deters, 80 IBLA 121 (1984); Pioneer Farmout #1, Ltd., 76 IBLA 337 (1983). Thus, appellant's assertion of hospitalization cannot serve to excuse the late payment. Presumably his statement concerning bad weather relates to his December 12 submission to BLM. We note, however, that the postmark on the envelope shows that payment was not mailed until December 9, 2 days after it was due in the BLM Wyoming State Office.

With regard to appellant's claim that BLM must issue the lease because it cashed his check, appellant is incorrect. Cashing a rental check and placing the funds in an unearned account does not constitute a binding obligation to issue a lease, since no rights to a lease accrue absolutely until the lease itself is executed by the appropriate Government official. See McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973); James Muslow, Sr., 51 IBLA 19 (1980).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge

^{3/} In the event of a discrepancy between the written and figure amounts of a check, the printed or written amount governs the amount for which it is a valid order to pay. Dawson v. Andrus, 612 F.2d 1280, 1282 (10th Cir. 1980); Derelys W. Delano, 69 IBLA 360 (1983). BLM may properly refuse to accept a check with such a discrepancy. See Bertram F. Rudolph, Jr., 39 IBLA 167 (1979).